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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Appellant,

v.

VED SERAFIN PATEL, JR.,

Defendant and Respondent.

C086302

(Super. Ct. No. STK-CR-FER-  
2017-12430)

The trial court dismissed a felony complaint against defendant Ved Serafin Patel, Jr., based on its finding that the People had failed to have the police prepare a supplemental report about its initial contact with defendant. The dismissal was with prejudice.

On appeal, the People contend the trial court erred in dismissing the case. According to the People, dismissal is a proper sanction for a criminal discovery violation only when it is required by the United States Constitution, and dismissal was not required here because nothing in the record shows an additional police report would have

contained material exculpatory evidence. The People also argue that the court lacked discretion to dismiss in the interest of justice under Penal Code<sup>1</sup> section 1385. We agree and reverse the judgment of dismissal.

#### FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In September 2017, the People filed a complaint charging defendant with two felony counts of possessing controlled substances for sale. (Health & Saf. Code, §§ 11351, 11378.)<sup>2</sup> Two months later, at a pretrial conference in November 2017, the court dismissed the complaint with prejudice because the police had not prepared a supplemental report that the court had requested during earlier pretrial hearings. The minute order from the hearing states: “Case dismissed with prejudice upon motion of Court, Interest of Justice.”

The court had asked the prosecutor to request that the Stockton Police Department prepare a supplemental report from the officer “who actually detained the defendant, initial contact . . . .” The court noted that it had repeatedly continued the case so that the police officers could prepare the report.

The prosecutor informed the court that only one of the two police officers involved in contacting defendant wrote a report because that officer believed that his report covered the entire contact. The report, according to the prosecutor, “clearly documented” a consensual encounter between defendant and the police. The prosecutor also represented to the court that the police department had “no additional reports” about the contact.

The court rejected the prosecutor’s explanation for the absence of an additional report. The court stated: “[W]hatever information that you have as to what the initial

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> The complaint alleges that defendant possessed methamphetamine and heroin for sale, but the record does not include any other facts regarding the underlying offenses.

contact was, was not from the officer that made the initial contact. And that's the important thing." According to the court, "the defense is not going to resolve these cases unless they have" a "minimal report" from "whoever [made] the original detention . . . ." "The alternative is to set every one of these cases . . . for a [section] 1538.5 motion, subpoena the officers in, take up court time, instead of just writing a three-sentence report, which is all I ever wanted."

Because the police officers did not prepare the supplemental report, the court dismissed the complaint against defendant with prejudice: "And so that's what I'm going to do now is I'm going to dismiss this case . . . ." The court emphasized that it intended to dismiss cases in the future if the police officers did not produce reports that the court requested: "[I]t is going to be my intention to request these reports in similar circumstances, and if they insist on not providing the reports, I will continue to dismiss these cases . . . ."

When asked for the basis of the dismissal, the court stated: "The basis for the dismissal was that it's a due process thing, I guess." The court then reiterated that it wanted a report from the officer who had initially contacted defendant because "[t]he alternative would have been" a hearing on a defense motion to suppress. Having that hearing instead of writing the report is "not an official way to do business, and I don't want to do business that way, and I think if I have to have an object lesson for them to understand that, then this is what it is."

The People timely appealed. Defendant did not file a responsive brief or otherwise appear on appeal.

## DISCUSSION

### I

#### *Dismissal as a Discovery Sanction*

Section 1054 et seq. governs discovery in criminal cases. Under section 1054.1, the prosecutor must "disclose to the defendant or his or her attorney" certain "materials

and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies.” That material includes “[r]elevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial,” as well as “[a]ny exculpatory evidence.” (§ 1054.1, subds. (e), (f).)

Subdivision (b) of section 1054.5 provides that “[u]pon a showing that a party has not complied with Section 1054.1 . . . , a court may make any order necessary to enforce the provisions of this chapter . . . .” Subdivision (c) of that statute provides, however, that “[t]he court shall not dismiss a charge pursuant to subdivision (b) unless required to do so by the Constitution of the United States.”

As the People note, the only substantive discovery that the United States Constitution mandates for disclosure is “material, exculpatory evidence” under *Brady v. Maryland* (1963) 373 U.S. 83 [10 L.Ed.2d 215] (*Brady*). They contend that because there is no showing that the supplemental report requested by the court would have contained any exculpatory information, let alone *material* exculpatory information, there was no *Brady* violation here and therefore no basis to dismiss the case. Based upon our independent review, we agree. (*People v. Ashraf* (2007) 151 Cal.App.4th 1205, 1212 [while abuse of discretion is generally the proper standard of appellate review on matters regarding discovery in criminal cases, the de novo standard of review applies where the court lacks discretion to dismiss under section 1054.5, subdivision (c), which *forbids* the use of dismissal as a discovery sanction unless the federal Constitution *requires* it].)

“Under *Brady*, ‘the prosecution must disclose to the defense any evidence that is ‘favorable to the accused’ and is ‘material’ on the issue of either guilt or punishment.’ ” (*People v. Ashraf, supra*, 151 Cal.App.4th at p. 1212.) Evidence is “favorable” under *Brady* if it either helps the defendant or hurts the prosecution, as by impeaching one of its witnesses. (*Ibid.*) Evidence is “material” only if a reasonable probability exists that had it been disclosed to the defendant, the result would have been different. (*Ibid.*)

In this case, the record contains no evidence showing the requested supplemental report would have included any materially exculpatory evidence. (*People v. Superior Court (Meraz)* (2008) 163 Cal.App.4th 28, 52 [“ ‘ “The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense” ’ ”].) To the contrary, the prosecutor represented to the court that no other police report existed, and the report that had been produced covered the entire police contact with defendant. On this record, we cannot say there ever *was* any evidence—in the form of a written or recorded statement by the other officer—that the People failed to disclose. Thus, there is no evidence of a *Brady* violation, and the court erred in dismissing the action for failure to produce such a supplemental police report.

## II

### *Dismissal in the Interest of Justice Under Section 1385*

The court’s minute order states that the court dismissed the charges with prejudice, in the interest of justice. Although not expressly stated, we assume the court meant that it ordered dismissal of the action under section 1385. That was improper.

While section 1385 authorizes a court to dismiss a criminal action “in furtherance of justice” (§ 1385, subd. (a)), the statute does not permit the court to dismiss a criminal action in response to a discovery violation unless section 1054.5 authorizes the dismissal. (*People v. Superior Court (Meraz)*, *supra*, 163 Cal.App.4th at p. 54.) That is, unless there is a *Brady* violation. (*Ibid.* [§ 1385 cannot be used to circumvent the limitation on dismissal contained in § 1054.5].) Because we have concluded that no *Brady* violation occurred, the trial court could not impliedly rely on section 1385 to dismiss the charges with prejudice.

## DISPOSITION

The judgment of dismissal is reversed.

/s/  
BLEASE, Acting P. J.

We concur:

/s/  
HOCH, J.

/s/  
RENNER, J.